742 PHIL. 647

THIRD DIVISION

[G.R. No. 185345, September 10, 2014]

RONNIE L. ABING, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, ALLIED BANKING CORPORATION, FACILITATORS GENERAL SERVICES AND MARILAG BUSINESS AND INDUSTRIAL MANAGEMENT SERVICES, INC., RESPONDENTS.

R E S O L U T I O N

REYES, J.:

On petition for review on *certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] of the Court of Appeals (CA) dated July 16, 2008 in CA-G.R. SP No. 98993, and its Resolution[3] dated November 11, 2008, upholding the Decision[4] dated October 31, 2006 of the National Labor Relations Commission (NLRC) in NLRC-NCR Case No. 00-11-12681-03, which reconsidered its earlier Decision[5] dated March 23, 2006 and ordered the reinstatement of the Labor Arbiter's (LA) Decision[6] dated January 14, 2005 dismissing the petitioner's complaint for illegal dismissal.

The Antecedent Facts

In December 1991, Ronnie L. Abing (petitioner) sought employment with respondent Allied Banking Corporation (Allied Bank), and was instructed to go to respondent Marilag Business and Industrial Management Services, Inc. (Marilag), which had a service contract with the said bank. The petitioner filled out an application form with Marilag, passed the medical examination, and was told to report at Allied Bank. Assigned at its legal department, the petitioner was progressively assigned various tasks such as messenger, skip tracer, checker and verifier of properties, and receiving clerk/vault keeper. He was issued an Allied Bank ID as its contractual employee.[7]

On August 26, 2002, Allied Bank's service contract with Marilag was terminated, and Allied Bank entered into a new service contract with respondent Facilitators General Services, Inc. (FGSI). On September 3, 2002, the petitioner was instructed to report to FGSI, where he filled out an application form. Thereafter, he resumed his work at Allied Bank.[8]

In October 2003, Allied Bank terminated its contract with FGSI, and thus told the petitioner to stop reporting at its main office by October 17, 2003. Claiming that he was an employee of the said bank and that he was being illegally terminated without due process, the petitioner filed a complaint against Allied Bank for illegal dismissal. He argued that its service contracts with FGSI and Marilag were part of a scheme to keep him a contractual employee and prevent his regularization,

notwithstanding that he had served the bank continuously for many years and performed duties which were usually necessary and desirable in its banking business.[9]

Allied Bank denied that the petitioner was its employee, pointing out that it was Marilag and FGSI which hired him to perform services for the bank under their service agreements. It could not therefore have illegally dismissed the petitioner for he was never its employee, whereas his termination was the direct result of the termination of the bank's service agreements with Marilag and FGSI, respectively.[10]

FGSI for its part tried to show that it was an independent job contractor, employing the petitioner as a bookkeeper/receiving clerk/messenger with a daily salary of P250.00 plus P30.00 ECOLA, as evidenced by the Employment Agreement and Manifestation signed by the petitioner. It denied illegally dismissing the petitioner, claiming that when its service contract with Allied Bank was terminated, they re-assigned him to another workplace, such as Fortune Tobacco, Kenny Rogers, or even to other branches of Allied Bank, but the petitioner refused to be re-assigned, and insisted on continuing his work at the main office of Allied Bank. Realizing however that the said assignment was no longer possible due to the termination of its service agreement with FGSI, the petitioner executed a Quitclaim and Release on October 28, 2003 after he was paid his 13th month pay and service incentive leave pay.[11]

For its part, Marilag manifested that on December 21, 2002, the petitioner also executed a quitclaim in its favor, after its service contract with Allied Bank was terminated, and by then, the petitioner had resumed his assignment at Allied Bank under FGSI's service contract.[12]

On January 14, 2005, the LA dismissed the petitioner's complaint for illegal dismissal for failing to prove that he was an employee of Allied Bank, finding that he was first employed by Marilag, and later by FGSI, both job contractors of Allied Bank.[13] The LA held that his claim was also negated by the quitclaims he executed in favor of Marilag and FSGI.

On appeal, the NLRC in its Decision[14] dated March 23, 2006 reversed the LA, having found that an employer-employee relationship existed between the petitioner and Allied Bank, in view of the fact that his services were usually *necessary and desirable* to the business of the said bank.

On motions for reconsideration filed by Allied Bank and FGSI, however, the NLRC granted the same. In the Decision[15] dated October 31, 2006, the NLRC reinstated the decision of the LA, finding that the petitioner was an employee of a legitimate job contractor, FGSI, which exercised control and supervision over him. Moreover, the NLRC noted that he signed a release and quitclaim in favor of FGSI.

On petition for *certiorari* under Rule 65, the CA upheld the NLRC, finding that FGSI is a legitimate job contractor pursuant to Section 4(a) of Department Order No. 18-02 of the Department of Labor and Employment (DOLE).

In the instant petition for review, the petitioner reiterates his insistence that Allied Bank is his true employer, not FGSI, and that the said bank illegally dismissed him

without valid cause and without due process.

Ruling of the Court

The petition is devoid of merit.

It is settled that a review of the decision of the CA in a labor case under Rule 45 of the Rules of Court is limited only to a review of errors of law imputed to the CA. We reiterate what was elucidated in *Bani Rural Bank, Inc. v. De Guzman*[16] that:

> In a Rule 45 review, we consider the **correctness of the assailed CA decision**, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct**. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?**[17] (Emphasis supplied)

In the instant case, the Court finds no reversible error with the decision of the CA in dismissing the petition for *certiorari* filed before it. The CA correctly held that the respondent NLRC committed no arbitrary and despotic exercise of its discretion amounting to lack or excess of jurisdiction when it ruled that FGSI is an independent job contractor and that the petitioner is an employee thereof. The LA, NLRC and the CA all found that FGSI is a legitimate job contractor and that the petitioner was an employee of FGSI when he was terminated upon the expiration of its service contract with Allied Bank. Section 4(a) of Department Order No. 18-02 issued by the DOLE, cited by the CA, defines legitimate labor contracting or subcontracting "as an arrangement whereby a principal agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal. Under such an arrangement, no employer-employee relationship is created between the principal and the contractual worker, who is actually the employee of the contractor."[18]

On the other hand, labor-only contracting as defined by Article 106 of the Labor Code occurs when any of the following circumstances occurs: *first,* the contractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by the contractor are performing activities which are directly related to the principal business of the employer; or *second,* the contractor does not exercise the right to